

FIFTH AMENDMENT TO THE AGREEMENT FOR  
CONSULTATION AND OTHER SERVICES

This Amendment is entered into this 20th day of September, 2016, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and Vali Cooper & Associates, Inc., a California corporation (hereafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the parties entered into an Agreement on November 20, 2013 entitled "Consultant Services Agreement between the City of Milpitas and Vali Cooper & Associates, Inc." ("Agreement") for engineering services on the BART Silicon Valley Berryessa Extension (SVBX) project (Project No. 4265) in the amount of Nineteen Thousand Seven Hundred Sixty Dollars (\$19,760); and

WHEREAS, the parties entered into Amendment No. 1 to the Agreement on January 21, 2014 to increase the compensation in the amount of Seventy Five Thousand Dollars (\$75,000) to allow CONSULTANT to continue providing support services for the BART Silicon Valley Berryessa Extension (SVBX) project; and

WHEREAS, the parties entered into Amendment No. 2 to the Agreement on June 3, 2014 to extend the term to June 30, 2015 and increase the compensation in the amount of One Hundred Fifty Eight Thousand Two Hundred Forty Dollars (\$158,240) to allow CONSULTANT to continue providing support services for the BART Silicon Valley Berryessa Extension (SVBX) project; and

WHEREAS, the parties entered into Amendment No. 3 to the Agreement on December 16, 2014 to extend the term to September 30, 2015 and increase the compensation in the amount of Three Hundred Thousand Dollars (\$300,000) to allow CONSULTANT to continue providing support services for the BART Silicon Valley Berryessa Extension (SVBX) project; and

WHEREAS, the parties entered into Amendment No. 4 to the Agreement on September 15, 2015 to extend the term of the Agreement to October 31, 2016 increase the compensation in the additional amount of Three Hundred Ten Thousand Dollars (\$310,000) to allow CONSULTANT to continue providing support services for the BART Silicon Valley Berryessa Extension (SVBX) project and Montague Widening project; and

WHEREAS, the parties desire to extend the term through February 28, 2017 and increase compensation by Two Hundred Thirty Thousand Dollars (\$230,000) for a total not to exceed amount of One Million Ninety Three Thousand Dollars (\$1,093,000 ) to allow CONSULTANT to continue providing support services for the BART Silicon Valley Berryessa Extension (SVBX) project and Montague Widening project.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. Section 1.1, entitled "Term of Services" of the Agreement is amended in its entirety to read as follows:

Terms of Services. The term of this Agreement shall begin on the date first noted above and shall end on February 28, 2017, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

2. Section 2, entitled "Compensation" of the Agreement is amended in its entirety to read as follows:

Section 2. Compensation. City hereby agrees to pay Consultant an amount not to exceed One Million Ninety Three Thousand Dollars for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

3. Exhibit A-4 The last sentence of Exhibit A-4 shall be revised to read "All work shall be completed by February 28, 2017."
4. Exhibit B-4 is repealed and replaced in its entirety with Exhibit B-5.
5. The CONSULTANT agrees to maintain and pay for all insurance policies as stated in Section 4, entitled "Insurance Requirements" of the Agreement dated August 18, 2015, between CONSULTANT and CITY. The CONSULTANT shall provide CITY with renewal certificates of the current policies upon the expiration of the current policy.
6. All other provisions of the Agreement shall remain in full force and effect.

This Amendment is executed as of the date on the first page.

APPROVED BY:

CITY OF MILPITAS

VALI COPPER & ASSOCIATES, INC.

CONSULTANT

\_\_\_\_\_  
Thomas C. Williams, City Manager

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John Collins, Chief Operating Officer

APPROVED AS TO CONTENT:

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Steven J. Machida, Director of Engineering/City Engineer

APPROVED AS TO FORM:

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Christopher J. Diaz, City Attorney

EXHIBIT B-5

COMPENSATION SCHEDULE

<u>Personnel</u>	<u>2016 Hourly Rates</u>
Russ Moore	\$195
Gareth Gill	\$155

Other Vali Cooper & Associates, Inc. personnel may be assigned, upon mutual agreement of City and Vali Cooper & Associates, Inc., and according to the billing schedules for 2016 and 2017.